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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1353

Introduced by Assembly Member Matthews

February 21, 2003

An act to add Section 25150.8 to, and to add and repeal Section 25150.7 of, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1353, as amended, Matthews. Treated wood waste: disposal.

(1) Existing law regulates the control of hazardous waste, but exempts from the hazardous waste control laws, wood waste that is exempt from regulation under the federal Resource Conservation and Recovery Act of 1976, as amended (RCRA), if the wood waste is disposed of in a municipal landfill that meets certain requirements imposed pursuant to the Porter-Cologne Water Quality Control Act for the classification of disposal sites, and the landfill meets other specified requirements. A violation of the state's hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would define the term “treated wood” and would require treated wood waste, as defined, to be disposed of in either a class I hazardous waste landfill or in a composite-lined portion of a solid waste landfill unit that meets specified requirements. The bill would require any solid waste landfill accepting treated wood waste to meet certain requirements specified in the bill and to manage the treated wood waste in a specified manner. The bill would provide that if treated wood waste is accepted by a solid waste landfill that manages and disposes of the treated wood waste in a specified manner, the treated wood waste shall be deemed to be a solid waste, *and not a hazardous waste*.

The bill would, until January 1, 2007, exempt treated wood waste from the hazardous waste control laws, if specified requirements are met.

~~The bill would require the Department of Toxic Substances Control, by July 1, 2005, to make and to develop a written notice describing the health hazards associated with treated wood waste and requirements applicable to the handling, disposal, and other management of treated wood waste. The bill would require each wholesaler and retailer in this state to provide this notice to each purchaser of treated wood and treated wood-like products~~ *conspicuously post information describing the health hazards associated with treated wood waste and how to safely manage, handle, and dispose of treated wood waste.* The bill would require the wood preserving industry, by July 1, 2005, to make specified information available to generators of treated wood waste. The bill would require the ~~department~~ *Department of Toxic Substances Control* to adopt, by January 1, 2007, regulations establishing management standards for treated wood waste as an alternative to the requirements specified in the hazardous waste control laws.

The bill would require a person subject to the hazardous waste control laws to comply with the alternative standard specified in the regulations adopted by the department or with the requirements of the hazardous waste control laws.

The bill would provide that on January 1, 2005, all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.

The bill would require the department, by June 1, 2011, to prepare and post on its Web site, a report that makes a determination regarding the successful compliance with, and implementation of, the requirements imposed by the bill. The bill would make the requirements imposed by the bill inoperative on June 1, 2012, and, would repeal them



on January 1, 2013, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed, *except for the exemption of treated wood waste from the hazardous waste control laws, if it is disposed of at a solid waste landfill.*

Since a violation of the regulations adopted by the department would be a crime, the bill would impose a state-mandated local program.

(2) The bill would require the ~~California Research Bureau, in consultation with the Department of Toxic Substances Control and the California Integrated Waste Management Board, to perform a study related to treated wood waste and to submit the published findings of the study to the Legislature, the Director of Toxic Substances Control, and the California Integrated Waste Management Board~~ *Senate Office of Research to review and make findings regarding treated wood products* by June 1, 2006.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25150.7 is added to the Health and
2 Safety Code, to read:
3 25150.7. (a) The Legislature finds and declares that this
4 section is intended to address the unique circumstances associated
5 with the generation and management of treated wood waste. The
6 Legislature further declares that this section shall not be construed
7 as setting a precedent applicable to the management, including
8 disposal, of other hazardous wastes.
9 (b) For purposes of this section, the following definitions shall
10 apply:
11 (1) "Treated wood" means wood that has been treated with a
12 chemical preservative for purposes of protecting the wood against
13 attacks from insects, microorganisms, fungi, and other
14 environmental conditions that can lead to decay of the wood and

1 the chemical preservative is registered pursuant to the Federal
2 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136
3 and following).

4 (2) “Wood preserving industry” means business concerns,
5 other than retailers, that manufacture or sell treated wood products
6 in the state.

7 (c) This section applies only to treated wood waste that is a
8 hazardous waste, solely due to the presence of a preservative in the
9 wood, and to which both of the following requirements apply:

10 (1) The treated wood waste is not subject to regulation as a
11 hazardous waste under the federal act.

12 (2) Section 25143.1.5 does not apply to the treated wood waste.

13 (d) (1) Notwithstanding Sections 25157.8, 25189.5, and
14 25201, treated wood waste shall be disposed of in either a class I
15 hazardous waste landfill, or in a composite-lined portion of a solid
16 waste landfill unit that meets all requirements applicable to
17 disposal of municipal solid waste in California after October 9,
18 1993, and that is regulated by waste discharge requirements issued
19 pursuant to Division 7 (commencing with Section 13000) of the
20 Water Code for discharges of designated waste, as defined in
21 Section 13173 of the Water Code, or treated wood waste.

22 (2) A solid waste landfill that accepts treated wood waste shall
23 comply with all of the following requirements:

24 (A) Manage the treated wood waste so as to prevent
25 scavenging.

26 (B) Ensure that any management of the treated wood waste at
27 the solid waste landfill prior to disposal, or in lieu of disposal,
28 complies with the applicable requirements of this chapter, except
29 as otherwise provided pursuant to subdivision (e) or regulations
30 adopted pursuant to subdivision (g).

31 ~~(C) Ensure that the unit of the solid waste landfill in which the~~
32 ~~treated wood waste is disposed of has a leachate collection system~~
33 ~~and a leachate and groundwater monitoring system.~~

34 *(C) If monitoring at the composite-lined portion of a landfill*
35 *unit at which treated wood waste has been disposed of indicates a*
36 *verified release, then treated wood waste shall no longer be*
37 *discharged to that landfill unit until corrective action results in*
38 *cessation of the release.*

39 (e) (1) Treated wood waste is exempt from the requirements of
40 this chapter if all of the following requirements are met:

1 (A) The treated wood waste is managed so as to prevent
2 scavenging.

3 (B) The treated wood waste is not disposed of, except as
4 allowed pursuant to subdivision (d).

5 (C) The treated wood waste is not burned, recycled, reclaimed,
6 or reused, except in accordance with the applicable requirements
7 of this chapter and the regulations adopted pursuant to this chapter.

8 (D) On and after July 1, 2005, the treated wood waste is not
9 stored for more than 90 days and, when stored, is protected from
10 run-on and run-off, and placed on a surface sufficiently
11 impervious to prevent, to the extent practical, contact with and any
12 leaching to soil or water.

13 (E) The treated wood waste is not mixed with other wood waste
14 prior to disposal.

15 (F) The treated wood waste is handled in a manner consistent
16 with all applicable requirements of the California Occupational
17 Safety and Health Act of 1973 (Chapter 1 (commencing with
18 Section 6300) of Part 1 of Division 5 of the Labor Code), including
19 all rules, regulations, and orders relating to hazardous waste.

20 (2) The exemption provided by this subdivision shall remain in
21 effect until January 1, 2007, and as of that date is inoperative.

22 ~~(f) (1) On or before July 1, 2005, the department shall develop,~~
23 ~~in consultation with the wood preserving industry and appropriate~~
24 ~~state agencies, a written notice, in English and other languages,~~
25 ~~describing the health hazards associated with treated wood waste~~
26 ~~and requirements applicable to the handling, disposal, and other~~
27 ~~management of treated wood waste. The department shall provide~~
28 ~~the notice to wholesalers and retailers of treated wood and treated~~
29 ~~wood-like products used for fencing, decking, retaining walls,~~
30 ~~landscaping, outdoor structures, and similar uses.~~

31 ~~(2) Each wholesaler and retailer of treated wood and treated~~
32 ~~wood-like products in this state shall provide the notice developed~~
33 ~~pursuant to paragraph (1) to each purchaser of treated wood and~~
34 ~~treated wood-like products used for fencing, decking, retaining~~
35 ~~walls, landscaping, outdoor structures, and similar uses.~~

36 ~~(3)~~
37 *(f) (1) Each wholesaler and retailer of treated wood and*
38 *treated wood-like products in this state shall conspicuously post*
39 *information at or near the point of display or customer selection*
40 *of treated wood and treated wood-like products used for fencing,*

1 decking, retaining walls, landscaping, outdoor structures, and
2 similar uses. The information shall be provided to wholesalers and
3 retailers by the wood preserving industry in 22-point font, or
4 larger, and contain the following message:

5 *Warning - Potential Danger*

6 *These products are treated with wood preservatives registered*
7 *with the United States Environmental Protection Agency and the*
8 *California Department of Pesticide Regulation and should only be*
9 *used in compliance with the product labels.*

10 *This wood may contain chemicals classified by the State of*
11 *California as hazardous and should be handled and disposed of*
12 *with care. Check product label for specific preservative*
13 *information and Proposition 65 warnings concerning presence of*
14 *chemicals known to the State of California to cause cancer or birth*
15 *defects.*

16 *Anyone working with treated wood, and anyone removing old*
17 *treated wood, needs to take precautions to minimize exposure to*
18 *themselves, children, pets, or wildlife, including:*

19 ☐ *Avoid contact with skin. Wear gloves and long sleeved*
20 *shirts when working with treated wood. Wash exposed areas*
21 *thoroughly with mild soap and water after working with*
22 *treated wood.*

23 ☐ *Wear a dust mask when machining any wood to reduce the*
24 *inhalation of wood dusts. Avoid frequent or prolonged*
25 *inhalation of sawdust from treated wood. Machining*
26 *operations should be performed outdoors whenever possible*
27 *to avoid indoor accumulations of airborne sawdust.*

28 ☐ *Wear appropriate eye protection to reduce the potential for*
29 *eye injury from wood particles and flying debris during*
30 *machining.*

31 ☐ *If preservative or sawdust accumulates on clothes, launder*
32 *before reuse. Wash work clothes separately from other*
33 *household clothing.*

34 ☐ *Promptly clean up and remove all sawdust and scraps and*
35 *dispose of appropriately.*

36 ☐ *Do not use treated wood under circumstances where the*
37 *preservative may become a component of food or animal feed.*

38 ☐ *Only use treated wood that's visibly clean and free from*
39 *surface residue for patios, decks, or walkways.*

1 ☐ *Do not use treated wood where it may come in direct or*
2 *indirect contact with public drinking water, except for uses*
3 *involving incidental contact such as docks and bridges.*

4 ☐ *Do not use treated wood for mulch.*

5 ☐ *Do not burn treated wood. Preserved wood should not be*
6 *burned in open fires, stoves, or fireplaces.*

7 *For further information, go to (Web site) or call (toll free*
8 *number).*

9 *In addition to the above listed precautions, treated wood waste*
10 *shall be managed in compliance with applicable hazardous waste*
11 *control laws.*

12 (2) On or before July 1, 2005, the wood preserving industry
13 shall, jointly and in consultation with the department, make
14 information available to generators of treated wood waste,
15 including fencing, decking and landscape contractors, solid waste
16 landfills, and transporters, that describes how to best handle,
17 dispose of, and otherwise manage treated wood waste, through the
18 use either of a toll-free telephone number, Internet Web site,
19 information labeled on the treated wood, information
20 accompanying the sale of the treated wood, or by mailing if the
21 department determines that mailing is feasible and other methods
22 of communication would not be as effective. *A treated wood*
23 *manufacturer or supplier to a wholesaler or retailer shall also*
24 *provide the information with each shipment of treated wood*
25 *products to a wholesaler or retailer; and the wood preserving*
26 *industry shall provide it to fencing, decking, and landscaping*
27 *contractors, by mail, using the Contractor's State Licensing*
28 *Board's available listings, and license application packages.* The
29 department may provide guidance to the wood preserving
30 industry, to the extent resources permit.

31 (g) (1) On or before January 1, 2007, the department, in
32 consultation with the California Integrated Waste Management
33 ~~Board and the State Water Resources Control Board, shall adopt,~~
34 *Board, the State Water Resources Control Board, and the Office of*
35 *Environmental Health Hazard Assessment, and after*
36 *consideration of any known health hazards associated with treated*
37 *wood waste, shall adopt* and may subsequently revise as necessary,
38 regulations establishing management standards for treated wood
39 waste as an alternative to the requirements specified in this chapter
40 and the regulations adopted pursuant to this chapter.

(2) The regulations adopted pursuant to this subdivision shall, at a minimum, ensure all of the following:

(A) Treated wood waste is properly stored, treated, transported, tracked, disposed of, and otherwise managed, so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.

(B) Treated wood waste is not reused, with or without treatment, except for a purpose that is consistent with the approved use of the preservative with which the wood has been treated. For purposes of this subparagraph, “approved uses” means a use approved at the time the treated wood waste is reused.

(C) Treated wood waste is managed in accordance with all applicable laws.

(D) Any size reduction of treated wood waste is conducted in a manner that prevents the uncontrolled release of hazardous constituents to the environment, and that conforms to applicable worker health and safety requirements.

(E) All sawdust and other particles generated during size reduction are captured and managed as treated wood waste.

(F) All employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

(3) This subdivision does not authorize the department to adopt a regulation that does one or more of the following:

(A) Imposes a requirement as an addition to, rather than as an alternative to, one or more of the requirements of this chapter.

(B) Supersedes subdivision (d) concerning the disposal of treated wood waste.

(C) Supersedes any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected

1 person to choose between complying with the requirements
2 specified in this chapter or complying with the alternative
3 conditions set forth in the regulation.

4 (h) (1) A person managing treated wood waste who is subject
5 to a requirement of this chapter, including a regulation adopted
6 pursuant to this chapter, shall comply with either the alternative
7 standard specified in the regulations adopted pursuant to
8 subdivision (g) or with the requirements of this chapter.

9 (2) A person who is in compliance with the alternative standard
10 specified in the regulations adopted pursuant to subdivision (g) is
11 deemed to be in compliance with the requirement of this chapter
12 for which the regulation is identified as being an alternative, and
13 the department and any other entity authorized to enforce this
14 chapter shall consider that person to be in compliance with that
15 requirement of this chapter.

16 (i) On January 1, 2005, all variances granted by the department
17 before January 1, 2005, governing the management of treated
18 wood waste are inoperative and have no further effect.

19 (j) Nothing in this section may be construed to limit the
20 authority or responsibility of the department to adopt regulations
21 under any other provision of law.

22 (k) On or before June 1, 2011, the department shall prepare and
23 post on its Web site, a report that makes a determination regarding
24 the successful compliance with, and implementation of, this
25 section.

26 (l) (1) This section shall become inoperative on June 1, 2012,
27 and, as of January 1, 2013 is repealed, unless a later enacted statute,
28 that becomes operative on or before January 1, 2013, deletes or
29 extends the dates on which it becomes inoperative and is repealed.

30 (2) Notwithstanding paragraph (1), any regulations adopted
31 pursuant to this section on or before June 1, 2012 shall continue in
32 force and effect after that date, until repealed or revised by the
33 department.

34 SEC. 2. Section 25150.8 is added to the Health and Safety
35 Code, to read:

36 25150.8. If treated wood waste is accepted by a solid waste
37 landfill that manages and disposes of the treated wood waste in
38 accordance with Section 25143.1.5 or paragraphs (1) and (2) of
39 subdivision (d) of Section 25150.7, the treated wood waste ~~shall~~,
40 *upon acceptance by the solid waste landfill, shall thereafter be*

1 deemed to be a solid waste ~~for purposes of, and not a hazardous~~
2 ~~waste, for purposes of this chapter and~~ Section 40191 of the Public
3 Resources Code.

4 ~~SEC. 3. On or before June 1, 2006, the California Research~~
5 ~~Bureau, in consultation with the Department of Toxic Substances~~
6 ~~Control and the California Integrated Waste Management Board,~~
7 ~~shall perform a study, pursuant to this section, and shall submit the~~
8 ~~published findings of the study to the Legislature, the Director of~~
9 ~~Toxic Substances Control, and the California Integrated Waste~~
10 ~~Management Board. The bureau shall examine all of the following~~
11 ~~areas relating to treated wood waste:~~

12 ~~(a) Projections of future disposal needs.~~

13 ~~(b) Potential health impacts of treated wood products and~~
14 ~~treated wood wastes.~~

15 ~~(c) Bioremediation and extraction of metals and contaminants.~~

16 ~~(d) Options for eliminating contaminants at the source.~~

17 ~~SEC. 4.—~~

18 ~~SEC. 3. On or before June 1, 2006, the Senate Office of~~
19 ~~Research, in consultation with appropriate agencies, shall review~~
20 ~~and make findings regarding policy options concerning treated~~
21 ~~wood products.~~

22 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
23 ~~Section 6 of Article XIII B of the California Constitution because~~
24 ~~the only costs that may be incurred by a local agency or school~~
25 ~~district will be incurred because this act creates a new crime or~~
26 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
27 ~~for a crime or infraction, within the meaning of Section 17556 of~~
28 ~~the Government Code, or changes the definition of a crime within~~
29 ~~the meaning of Section 6 of Article XIII B of the California~~
30 ~~Constitution.~~